

	OAH 3-1902-20840-2 DOLI BC2802381/CMW; BC2900437/CMW;BC2900773/CMW; BC2801381/CMW;BC2801180/CMW
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building Contractor License of LeMaster Restoration, Inc., f/k/a LeMaster Construction, Inc.	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
and	
In the Matter of the Residential Building Contractor License of LeMaster Restoration, Inc., and Verdean LeMaster, individually.	

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on March 18, 2010. The OAH record closed on March 31, 2010, upon receipt of post-hearing correspondence from the Respondents.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (Department). Neither LeMaster Restoration, Inc. (LRI), nor Verdean LeMaster (collectively Respondents) appeared for the hearing in person or through counsel.

This is a consolidated case involving an appeal from a Licensing Order issued by the Department dated July 29, 2009, which alleged contractor misconduct occurring after December 1, 2007, and a Statement of Charges issued by the Department on July 29, 2009, which alleged misconduct occurring before December 1, 2007. The cases were opened separately and consolidated in this docket.

In an Order dated December 15, 2009, the Administrative Law Judge recommended that the Department's motion for partial summary disposition be granted with regard to some of the issues raised in the Statement of Charges

dated July 29, 2009.¹ Accordingly, the hearing was limited to other issues raised in the Statement of Charges and in the Licensing Order dated July 29, 2009.

STATEMENT OF THE ISSUES

Is the Respondents' residential building contractor license subject to discipline because they:

(1) Demonstrated they are incompetent, untrustworthy, financially irresponsible, and unqualified to act under a license by failing to timely satisfy a judgment against them, in violation of Minn. Stat. § 326B.84(15) (2008)?²

(2) Failed to notify the Commissioner in writing within 15 days following entry of judgment based upon conduct requiring licensure as a residential building contractor, in violation of Minn. Stat. §§ 326B.805, subd. 5(c), and 326B.84, subd. 5?

(3) Engaged in fraudulent, deceptive, or dishonest practices by failing to obtain permits and inspections, in violation of Minn. Stat. § 326B.84(2) and Minn. R. 2891.0040, subp. 1 H?

(4) Provided false, misleading, or incomplete information in response to a request for information from the Commissioner, in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(2), and 326B.84(14);

(5) Demonstrated they are incompetent, untrustworthy, and financially irresponsible by engaging in a pattern of misconduct by filing inflated mechanics liens against their customers' property and commencing litigation against customers seeking monies in excess of the amounts due, in violation of Minn. Stat. §§ 326.91, subd. 1(6) (2006) and 326B.84(15)?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. LeMaster Restoration, Inc. (LRI) is a construction and loss remediation company that, at all relevant times, was solely owned by Verdean LeMaster. LRI is a licensed residential building contractor.

¹ The ALJ recommended summary disposition on Counts V, VI, and a portion of Count VII.

² Unless otherwise noted, all references to statutes are to the 2008 edition of Minnesota Statutes, and all references to rules are to the 2009 edition of Minnesota Rules. Some of the conduct at issue in this case occurred prior to the December 1, 2007, revision and re-codification of the Department's enabling legislation and is governed by procedures in effect at the time. No change was made to the substantive standards governing licensed conduct.

Satisfaction of the Woeste Judgment

2. In August 2004, LRI entered into a contract for restoration services with the Woestes to repair the fire damage to their home in Elk River, Minnesota. A few months later, the Woestes terminated the contract and hired a different contractor to complete the work.³

3. On January 13, 2005, LRI filed a mechanic's lien in the amount of \$357,670.84 against the Woestes' property. On February 4, 2005, LRI filed another mechanic's lien in the amount of \$302,670.84 against the property. LRI subsequently sued the Woestes in Sherburne County District Court, alleging that they owed \$402,024.10 in liquidated damages, interest, and attorney's fees. The Woestes filed counterclaims against LRI, including claims for damages to the home caused by LRI, damages for slander of title, and damages to the salvageable contents of their home due to LRI's failure to protect and preserve the property.⁴

4. On April 8, 2008, following a trial on the merits, the district court rejected LRI's claims and ordered judgment for the Woestes in the amount of \$301,302.72. This included approximately \$85,000 for damage to the home due to LRI's acts and omissions; \$53,000 for damage to salvageable contents due to LRI's failure to protect and preserve the contents of the home; \$2,200 for LRI's conversion of the homeowner's personal property; and \$160,000 in damages for slander of title. Among its findings and conclusions, the trial court determined that LRI's mechanic's lien was invalid and unenforceable because Respondents knowingly demanded an amount greater than what was justly due.⁵ The district court found specifically that "the January 13, 2005 and February 4, 2005 liens on [the Woestes'] home were inaccurate, grossly overstated, included items not properly subject to a mechanic's lien under the statute and were filed in bad faith."⁶ The district court further found that "a substantial portion of the work performed" at the Woestes' residence by LRI was of "shoddy, substandard quality and was incompetently performed."⁷ In addition, the district court found that in its dealings with the Woestes, LRI "engaged in repeated acts of

³ Affidavit of Charlie Durenberger dated Oct. 30, 2009, Ex. A at 2-15 (Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment in District Court File No. 71-C7-05-02693).

⁴ *Id.*, Durenberger Aff. Ex. A at 21-23.

⁵ *Id.*, Durenberger Aff. Ex. A at 27.

⁶ *Id.*, Durenberger Aff. Ex. A at 22; Ex. B at 7 (the district court's Memorandum). The mechanic's lien statute allows a lien claimant to recover only the amount due and owing for labor performed, or for skill, material, or machinery furnished in connection with an improvement of real property. There is no statutory provision allowing a lien claimant to recover lost profits or liquidated damages. See Minn. Stat. § 514.08, subd. 2.

⁷ *Id.*, Durenberger Aff. Ex. A at 7; Ex. B at 7-14.

dishonesty, disingenuousness and outright fraud, and made repeated misrepresentations about its intentions and workmanship.”⁸

5. LRI appealed the district court’s decision and, in a decision dated April 21, 2009, the Minnesota Court of Appeals affirmed in all material respects.⁹

6. LRI failed to notify the Commissioner, in writing or through any other means, about the entry of this judgment against it.

7. On or about June 16, 2009, the Woestes submitted a claim to the Contractor’s Recovery Fund based on the civil judgment. On June 19, 2009, LRI was served with a Notice of Hearing on the claim. The hearing was scheduled to take place July 30, 2009.¹⁰

8. On July 29, 2009, the Commissioner issued a Licensing Order revoking LRI’s residential building contractor license on the ground, among others, that LRI had failed to satisfy the judgment. The Licensing Order also assessed a \$20,000 monetary penalty against the company and required the Respondents to cease and desist from acting or holding themselves out as residential building contractors.¹¹

9. At the Recovery Fund hearing on July 30, 2009, the Woestes and the Commissioner of Labor and Industry submitted a Stipulation to the court indicating that the Woestes were entitled to the maximum payment from the Recovery Fund. The Respondents appeared and objected to payment from the Fund. The court took the matter under advisement.

10. On August 6, 2009, LRI paid the Woestes the full amount of the judgment.¹²

11. On August 17, 2009, an executed Satisfaction of Judgment was filed. The Woestes’ Application to recover from the Contractor’s Recovery Fund was thereafter dismissed.¹³

12. Based on the preclusive effect of the district court’s findings, the ALJ recommended that the Commissioner grant the Department’s motion for partial summary disposition on several claims alleged in the Statement of Charges: Count V (alleging negligent performance or breach of contract with

⁸ *Id.* During the trial, Verdean LeMaster testified that, although he was the president and sole owner of LRI, he had no involvement in the process of estimating, managing, supervising, or billing the projects undertaken by his company. *Id.*, Ex. D at 99-100.

⁹ *Id.*, Durenberger Aff. Ex. C (*LeMaster Construction, Inc. v. Woeste*, 2009 WL 1048194 (Minn. App. 2009) (unpublished)).

¹⁰ Ex. 2 (DOLI 000704).

¹¹ The Licensing Order did not become immediately effective because the Respondents filed a timely appeal and requested this contested case hearing.

¹² Ex. 2 (DOLI 001222).

¹³ *Id.*

regard to the Woeste contract), Count VI (alleging fraudulent, deceptive, or dishonest conduct with regard to the Woeste contract), and a portion of Count VII (alleging incompetence, untrustworthiness, and financial irresponsibility).¹⁴

Failure to Obtain Permits and Inspections; Misleading Information

Chaska Project

13. In November 2008, LRI obtained a building permit from the City of Chaska to remove and replace a homeowner's roof. LRI completed the work but did not schedule a final inspection. In March 2009, the City of Chaska requested that LRI schedule the final inspection. On May 21, 2009, the City filed a complaint with the Department about LRI's failure to obtain a final inspection of the work.¹⁵

14. On May 22, 2009, the Department sought an explanation from LRI about the failure to obtain or request the final inspection.¹⁶

15. LRI obtained the final inspection on May 27, 2009.¹⁷

16. In its response to the Department submitted on June 5, 2009, LRI asserted that the inspection was performed upon completion of the job, but the inspector failed to sign off the card and close out the permit. LRI further stated that the inspector "conced[ed] inadvertence on the City's part."¹⁸

17. The City inspector reviewed all inspection schedules from the date the permit was issued to the end of 2008 and found no request from LRI for an inspection of the work. There is no evidence that a final inspection was requested or performed prior to May 27, 2009.¹⁹

Roseville Project

18. In December 2008, LRI contracted with a Roseville homeowner for the remediation and repair of damage caused by frozen pipes. On January 28, 2009, LRI sent a quote to the homeowner for the cost of repairs. The plumbing and furnace work was completed in January 2009, and the homeowner's insurance company sent LRI a check on February 23, 2009.²⁰

¹⁴ See Recommended Order on Motion for Partial Summary Disposition (Dec. 15, 2009).

¹⁵ Ex. 7 (DOLI 000697-701).

¹⁶ Ex. 5.

¹⁷ Ex. 7 (DOLI 000677).

¹⁸ Ex. 7 (DOLI 000676); Ex. 6 (DOLI 000544).

¹⁹ Ex. 7 (DOLI 000673).

²⁰ Ex. 8 (DOLI 000955-959; 000965; 000972).

19. On April 9, 2009, the Department requested that LRI provide copies of all permits and inspection reports for this project.²¹

20. On April 28, 2009, LRI applied for a building permit for the work, which was issued on May 4, 2009.²² An LRI employee advised the City building inspector that the work was started and completed without a permit. He stated that he needed to obtain a permit at that time because his employer was auditing his work record.²³ Mechanical and plumbing permits were obtained at about the same time.²⁴

21. Inspection records reflect that no inspection of electrical, framing, or insulation work could be performed because these areas were concealed by drywall applied prior to the permit application.²⁵

22. There is no evidence that any work on this project was performed after January 2009. In responding to the Department's request for information, LRI stated that repairs were "currently active" and that the job was not completed until May 28, 2009.²⁶

Maplewood Project

23. In December 2008, LRI contracted with a townhome association in Maplewood to remediate and repair damage caused by frozen pipes. The work on the project was performed from December 2008 through March 2009.²⁷

24. On April 9, 2009, the Department requested that LRI provide copies of all permits and inspection reports for this project.²⁸

25. LRI applied for and received building and mechanical permits for this project on April 28, 2009, and April 27, 2009, respectively. A notation on the building permit states "WORK DONE WITHOUT PERMIT. SUBJECT TO FIELD VERIFICATION."²⁹ The final inspection took place on May 21, 2009.³⁰

26. There is no evidence that any work on this project was done after March 2009. In response to the Department's request for information, on May 1,

²¹ Ex. 3.

²² Ex. 8 (DOLI 000991-993).

²³ Ex. 8 (DOLI 000991).

²⁴ Ex. 8 (DOLI 000572).

²⁵ Ex. 8 (DOLI 000569).

²⁶ Ex. 8 (DOLI 000954 and 000568); Ex. 6 (DOLI 000545); Ex. 4 (DOLI 000948).

²⁷ Ex. 9 (DOLI 001018-21, 001023, 001025, 001028, 001033, 001050).

²⁸ Ex. 3 (DOLI 001179).

²⁹ Ex. 9 (DOLI 001016-17).

³⁰ Ex. 9 (DOLI 000557).

2009, LRI stated that the file remained “in billing” and LRI was currently in the process of final inspections.³¹

Woodbury Project

27. In December 2008, LRI contracted with another townhome association in Woodbury to remediate and repair damage caused by frozen pipes. The repair work on the project was performed in February and March 2009.³²

28. On April 9, 2009, the Department requested that LRI provide copies of all permits and inspection reports for this project.³³

29. On April 28, 2009, LRI obtained building, HVAC, and electrical permits from the City of Woodbury.³⁴ The inspections were completed by May 21, 2009.³⁵

30. There is no evidence that any work on this project was done after March 2009. In responding to the Department’s request for information, LRI stated that the job was still in “active status” and was not completed until May 21, 2009.³⁶

Brooklyn Center Project

31. On March 26, 2008, the Department received a complaint from homeowners in Brooklyn Center. The complaint detailed a long-standing dispute with LRI about work done in 2005 and 2006. The homeowners stated that in the course of the dispute, they contacted the City of Brooklyn Center and learned that LRI had never obtained permits or inspections for the work on this project.³⁷

32. The city inspector signed LRI’s permit application on December 5, 2005, but LRI did not pay for the permit, and no permit was issued at that time.³⁸ LRI did not obtain a permit for this work until April 3, 2008.³⁹ There are no records of any inspections performed on this job.

³¹ Ex. 4 (DOLI 000949).

³² Ex. 10 (DOLI 001054-1071; DOLI 000566-67).

³³ Ex. 3 (DOLI 001179-80).

³⁴ Ex. 10 (DOLI 000564).

³⁵ Ex. 10 (DOLI 000562).

³⁶ Ex. 10 (DOLI 001052; DOLI 000561); Ex. 4 (DOLI 000949).

³⁷ Ex. 11 (DOLI 000670-671)

³⁸ Ex. 11 (DOLI 000640-642). Although LRI provided a copy of the front of a check made out for the permit, there is no evidence that the check, dated December 6, 2005, was ever cashed.

³⁹ Ex. 11 (DOLI 000643-645).

Pattern of Overstated Claims

Forest Lake Project

33. In August 2005, LRI contracted with a homeowner in Forest Lake to repair a residence damaged by lightening and fire. In November 2006, after receiving payment from the homeowner's insurance company for most of the work, LRI billed the homeowners \$14,617.50 for the remaining balance. The homeowners disputed this amount, maintaining that some of the work was performed negligently. In subsequent discussions with the homeowner, LRI reduced its claimed balance to \$6,006.23, and in April 2007 it invoiced the homeowner for that amount.⁴⁰

34. In July 2007, LRI sued the homeowners in Washington County district court, claiming the homeowners owed \$15,299.65 plus finance charges and collection costs, including attorney's fees. The homeowners asserted a counterclaim. In April 2008 the matter was resolved by an agreement requiring the homeowners to pay LRI \$4,500 and LRI to provide a written apology stating that the work on the project did not meet expectations.⁴¹

Rogers Project

35. On September 30, 2006, LRI contracted with a homeowner in Rogers to repair damage caused by a tornado. On October 17, 2006, the homeowner terminated the contract and hired a different contractor to perform the rebuild (Ultimate Restoration, Inc.). At that point, LRI had performed water mitigation work and billed the homeowner in the amount of \$4,634.40 for that work.⁴²

36. In response to the termination letter, LRI maintained that the homeowner could not voluntarily terminate the contract without penalty and contended that the homeowner was required to pay liquidated damages in the amount of one-third of the unperformed contract amount, or \$41,603.75 total.⁴³

37. LRI declined to accept the insurance company check paying the bill for water mitigation services in full in satisfaction of its claim.⁴⁴

38. In February 2007, LRI filed a mechanic's lien on the property in the amount of \$41,603.75.⁴⁵

39. The homeowners brought an action in Hennepin County District Court alleging slander of title, in response to which LRI asserted a counterclaim

⁴⁰ Ex. 12 (DOLI 000193-238).

⁴¹ Ex. 12 (DOLI 000240-271).

⁴² Ex. 13 (DOLI 000001-10); Ex. 13a.

⁴³ Ex. 13 (DOLI 000013-14).

⁴⁴ Ex. 13 (DOLI 000007).

⁴⁵ Ex. 13 (DOLI 000015).

in the amount of \$42,348.72, plus finance charges and collection costs.⁴⁶ In April 2008, the matter was resolved by an agreement in which both parties withdrew their claims against each other and LRI agreed not to pursue its mechanic's lien claim.⁴⁷

Woodbury Project

40. In July 2007, LRI entered into a contract with a homeowner in Woodbury to repair a leaking roof and water damage to an interior wall. The contract price was \$2,010.26. LRI repaired the interior wall first, but it failed to perform any repairs to the roof. After numerous telephone calls from the homeowner requesting that LRI complete the work, LRI returned to the property and placed a plastic tarp over the leaking area. In September 2007, the homeowners advised LRI that they intended to hire a different contractor to complete the job due to LRI's unreasonable delay.⁴⁸

41. LRI then billed the homeowner in the amount of \$2,246.71 for work performed on the interior wall. The bill included a number of charges not reflected in the estimate incorporated into the contract, including five hours of labor for two roofers to install the plastic tarp and an additional 20% charge for overhead and profit.⁴⁹

42. In January 2008, LRI filed a claim in the amount of \$2,921.60 against the homeowners in Washington County conciliation court. The homeowners counterclaimed for the costs to correct the interior work and attorney's fees. After a hearing on the merits, a conciliation court referee dismissed all claims and counterclaims with prejudice.⁵⁰

Procedural Findings

43. On July 29, 2009, the Commissioner issued a Licensing Order revoking LRI's residential building contractor license and imposing a monetary penalty of \$20,000 based on the failure to satisfy the Woeste judgment or to advise the Commissioner about entry of the judgment; the failure to obtain a final inspection on the Chaska project, and the misleading information provided in response to the Department's request for information; and the failure to obtain permits for the work done in Roseville, Maplewood, and Woodbury. The Licensing Order alleges contractor misconduct occurring on or after December 1, 2007, the date on which the Department's new enforcement procedures became effective.⁵¹

⁴⁶ Ex. 13 (DOLI 000018-84).

⁴⁷ Ex. 13 (DOLI 000092-95).

⁴⁸ Ex. 14 (DOLI 000154-169).

⁴⁹ Ex. 14 (DOLI 000162-66).

⁵⁰ Ex. 14 (DOLI 000170).

⁵¹ Under the procedures effective before December 1, 2007, the Commissioner had to provide a hearing on a Statement of Charges before taking any disciplinary action against a license. After

44. On the same day, the Commissioner issued a Notice and Order for Prehearing Conference and Statement of Charges with regard to the underlying conduct in the Woeste matter and the failure to obtain a permit for the Brooklyn Center project. The Statement of Charges alleges contractor misconduct occurring prior to December 1, 2007. This matter was assigned Docket No. 3-1902-20704 in the Office of Administrative Hearings.

45. On August 26, 2009, LRI requested a contested case hearing to appeal the Licensing Order. On September 1, 2009, the Commissioner issued a Notice and Order for Prehearing Conference on the appeal of the Licensing Order. This matter was assigned Docket No. 3-1902-20840-2 in the Office of Administrative Hearings.

46. Both matters came on for a prehearing conference on September 10, 2009. Respondents were represented by counsel at the prehearing conference. During the conference, the two matters were consolidated under Docket No. 3-1902-20840-2.⁵²

47. On October 9, 2009, the Commissioner issued an Amended Statement of Charges that added the allegations of overstated claims against homeowners in the Forest Lake, Rogers, and Woodbury projects described above.

48. While these matters were pending, the Respondents defaulted on \$665,000 in loans made by the Eagle Valley Bank. In November 2009, Eagle Valley Bank commenced an action against the Respondents in Dakota County District Court to enforce its security interest in all of the Respondents' assets. On December 4, 2009, the district court established a receivership and appointed Lighthouse Management Group, Inc., as the receiver.⁵³

49. On December 15, 2009, the Administrative Law Judge issued the Recommended Order on Motion for Partial Summary Disposition, which recommends that the Commissioner give preclusive effect to the district court's findings regarding the Respondent's breach of contract, negligence, and dishonest conduct in the Woeste litigation.

50. By letter dated December 29, 2009, counsel for the Respondents withdrew from this matter. At the time, the hearing was scheduled to take place on January 20-22, 2010.

51. On January 4, 2010, the Commissioner issued a Notice of Amendment, Notice and Order for Hearing, Order for Summary Suspension, and Statement of Charges. The Order summarily suspended the Respondent's

that date, legislative changes allow the Commissioner to take action through a licensing order, and a hearing will take place only if the licensee requests it by appealing the order.

⁵² First Prehearing Order (Sept. 18, 2009).

⁵³ Ex. 17.

license under Minn. Stat. § 326B.083, subd. 13, pending the Commissioner's final order. The Notice of Amendment advised the Respondents that they had the right to request an expedited hearing on the summary suspension, but that absent a request for expedited hearing, the matter would proceed to hearing as scheduled on January 20-22, 2010. The Respondents did not request an expedited hearing.

52. On January 14, 2010, the Department's investigator was contacted by homeowners who had entered into a contract with LRI prior to the suspension order. The homeowners had returned from their holidays to find that a number of mechanic's liens had been placed on their home. The homeowners said they had given an insurance check in the amount of \$70,000 to the Respondents two days previously. The homeowners subsequently made arrangements to stop payment on the check. Around this time, the Department received information from a Burnsville homeowner that LRI had represented, in attempting to obtain a contract, that the company was a licensed building contractor.⁵⁴

53. Based on this information, the Department was concerned that Respondents were continuing to act as residential building contractors in disregard of the Order of Summary Suspension. On January 15, 2010, Department investigators issued and personally served an administrative subpoena on the Respondents. The subpoena requested information about all contracts between LRI and Minnesota homeowners, where work called for under the contract had not been completed. It also requested an accounting of funds received and expended on these projects.⁵⁵

54. The Department's investigators met with Verdean LeMaster after handing him the subpoena and explained what they were looking for through the subpoena. Mr. LeMaster maintained he had no idea how many jobs were pending at that time, but said he could put the information together within a few days. The Department agreed to allow him until January 19, 2010, to provide the information.⁵⁶ Mr. LeMaster further indicated that he thought he was permitted to continue working on projects begun before the Order of Summary Suspension. The Department investigators responded that LRI was not allowed to perform any work as a residential building contractor after January 4, 2010, and that the Department would not consider lifting the suspension order so that he could complete work on those contracts unless and until Mr. LeMaster provided the requested information about all pending contracts.⁵⁷

55. On January 15, 2010, the Respondents contacted the Administrative Law Judge to request a continuance of the hearing so that they could attempt to retain other counsel. The Department's counsel did not object to a continuance of the hearing. The hearing was continued to March 18-19,

⁵⁴ Testimony of Chris Williams.

⁵⁵ Ex. 15.

⁵⁶ Test. of C. Williams.

⁵⁷ *Id.*; Ex. 16.

2010. The parties were required to exchange all exhibits and witness lists by March 11, 2010.⁵⁸

56. The Respondents did not respond to the Department's administrative subpoena.⁵⁹

57. On February 23, 2010, the Respondents sold LRI's assets to Verlin LeMaster, the father of Verdean LeMaster. The district court authorized the receiver to consummate the sale of these assets. Valerie LeMaster, Esq., appeared on behalf of Verlin LeMaster in seeking the court's approval of the sale.⁶⁰

58. On March 12, 2010, the Respondents requested another continuance of the hearing. Verdean LeMaster stated that he had contacted several attorneys but was unable to provide funds for a retainer to hire any of them. The Department objected to any further continuance on the grounds that the Respondents had failed to respond to the administrative subpoena and that, absent this information, the Department was unable to determine whether the company was improperly engaging in work that required a license. The request for a continuance was denied.⁶¹

59. On March 18, 2010, the Respondents failed to appear for the hearing. Instead, Verdean LeMaster faxed to the Administrative Law Judge and the Department an Affidavit and requested that it be considered in lieu of a personal appearance. The Administrative Law Judge declined to receive the Affidavit of Verdean LeMaster into evidence at the hearing. It is, however, included in the procedural record of the case. The Respondents also submitted correspondence after the hearing contending that non-public information was disclosed during the hearing.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against the Respondent under Minn. Stat. §§ 14.50, 326B.082, and 326B.84.

2. The Respondents received due, proper and timely notice of the charges against them and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

⁵⁸ Letter from ALJ to Counsel (Jan. 20, 2010).

⁵⁹ Test. of C. Williams.

⁶⁰ Ex. 17.

⁶¹ Letter from ALJ to parties (Mar. 12, 2010).

3. The Department has complied with all relevant procedural legal requirements.

4. In order to prevail, the Department must prove by a preponderance of the evidence that the alleged violations occurred.

Count I and Count VII

5. The Commissioner may deny, suspend, limit, place conditions on, or revoke a license, or may censure the person holding the license, if the licensee or qualifying person has engaged in an act or practice that demonstrates that the licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner.⁶²

6. The Respondents satisfied the judgment obtained by the Woestes within approximately three months of the Court of Appeals decision affirming it. The Department failed to show that Respondents' failure to satisfy the judgment earlier than August 6, 2009, demonstrates that the Respondents were untrustworthy or financially irresponsible.

7. The Department did prove that the Respondents' pattern of filing overstated claims and mechanic's liens against the Woestes and other customers in Forest Lake, Rogers, and Woodbury, as described above, demonstrates that they are incompetent, untrustworthy, and financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6) (2006), and Minn. Stat. § 326B.84(15).

Count II

8. Licensed residential building contractors must notify the commissioner in writing if the licensee is found to be a judgment debtor based upon conduct requiring licensure within 15 days of the finding.⁶³ Failure to comply with this obligation is grounds for discipline under Minn. Stat. § 326B.84(5).

9. The Respondents failed to notify the commissioner within 15 days of the entry of judgment in favor of the Woestes on April 8, 2008, in violation of Minn. Stat. § 326B.805, subd. 5.

Count III

10. The Commissioner may deny, suspend, limit, place conditions on, or revoke a license, or may censure the person holding the license, if the licensee or qualifying person has engaged in a fraudulent, deceptive, or

⁶² Minn. Stat. § 326B.84(15).

⁶³ Minn. Stat. § 326B.805, subd. 5(c).

dishonest practice.⁶⁴ Performing construction without obtaining applicable permits and inspections is a fraudulent, deceptive, or dishonest practice.⁶⁵

11. The Respondents performed construction without first obtaining applicable permits in connection with the Chaska, Roseville, Maplewood, Woodbury, and Brooklyn Center projects described above, in violation of Minn. Stat. §§ 326B.84(2), 326.91, subd. 1(2) (2006), and Minn. R. 2891.0040, subp. 1 H.

Count IV

12. The Commissioner may deny, suspend, limit, place conditions on, or revoke a license, or may censure the person holding the license, if the licensee or qualifying person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises.⁶⁶

13. The Respondents provided false and misleading information to the commissioner with regard to permits and inspections of the Chaska project described above.

14. Disciplinary action against the Respondents is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum and in the Recommended Order on Motion for Partial Summary Disposition, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner AFFIRM the Licensing Order dated July 29, 2009, except with regard to the allegations contained in Count I; and take disciplinary action against the residential building contractor license of Respondents LeMaster Restoration, Inc., and Verdean LeMaster.

Dated: April 30, 2010

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded

⁶⁴ Minn. Stat. §§ 326B.84(2); 326.91, subd. 1(2) (2006).

⁶⁵ Minn. R. 2891.0040, subp. 1 H.

⁶⁶ Minn. Stat. § 326B.082, subd. 11(b)(2).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steve Sviggum, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

After the hearing, at which the Respondents declined to appear, they submitted two letters arguing that the denial of the request for a continuance was improper and that non-public information was improperly disclosed in the course of this proceeding.

At the time the Respondents requested the second continuance, LRI had completely failed to respond to the Department's administrative subpoena, which was issued so that the Department would be able to determine whether the company was performing residential building contractor work in violation of the suspension order. In addition, the Department had received information about new liens filed against the property of another homeowner, and additional information that LRI was continuing to hold itself out as a licensed contractor. The Respondents indicated that they had no prospect of obtaining counsel because of lack of funds. On this record, the ALJ concluded that the Respondents had failed to demonstrate good cause for the continuance.

In addition, the Respondents' arguments about data practices violations are not persuasive. On October 22, 2009, the Administrative Law Judge issued a Protective Order permitting the production to the Respondents of the Department's investigative files in this matter. The documents in those files were marked "Not Public" pursuant to the Protective Order when they were prepared for production to the Respondents in discovery. Once civil investigative data is presented as evidence in court or made part of a court record, however, it is deemed to be public.⁶⁷ Moreover, in cases involving licensing data, "[t]he entire record concerning a disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action."⁶⁸ Each of the several Notices and Orders for Hearing in this matter advised the Respondents that "if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2008)."

All of the exhibits received in this record are public data, as are the pleadings, orders, and correspondence contained in the procedural record. The hearing itself was open to the public. The Respondents' citation to portions of the Government Data Practices Act applicable to agency personnel decisions is misplaced.

K.D.S.

⁶⁷ Minn. Stat. § 13.39, subd. 3.

⁶⁸ Minn. Stat. § 13.41, subd. 5.